

FILED
U.S. DISTRICT COURT
DISTRICT OF COLORADO

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GREGORY C. LANGHAM
CLERK

Civil Action No. **IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**
'10 - CV - 02881 REB-MEH

BY _____ DEP. CLK

UNITED STATES OF AMERICA

Plaintiff,

v.

GEORGE THOMAS GAINES
d/b/a/ G&G TAX SERVICE,
a/k/a AMERICAN BENEFITS

Defendant.

COMPLAINT FOR PERMANENT INJUNCTION

Plaintiff, the United States of America, for its complaint against George Thomas Gaines, individually and doing business as G&G Tax Service, also known as American Benefits, states as follows:

Jurisdiction and Venue

1. This suit is brought under 26 U.S.C. §§ 7402, 7407, and 7408 to enjoin George Thomas Gaines, individually and doing business as G&G Tax Service, also known as American Benefits, and anyone in active concert or participation with him, from:
 - (a) Acting as a tax return preparer or otherwise directly or indirectly preparing or filing, or assisting in the preparation or filing of any federal tax return for any other person or entity;

- (b) Engaging in any activity subject to penalty under 26 U.S.C. §§ 6694, 6695, and/or 6701;
 - (c) Engaging in conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws; and
 - (d) Engaging in any other activity subject to penalty under the Internal Revenue Code.
- 2. This action has been requested by the Chief Counsel of the IRS, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General of the United States, pursuant to 26 U.S.C. §§ 7401, 7402, 7407, and 7408.
- 3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. §§ 7402(a), 7407 and 7408.
- 4. Venue is appropriate in this Court under 28 U.S.C. §§ 1391 and 1396 because Defendant resides in Aurora, Colorado, which is within this district. Also, Defendant operates G&G Tax Service, also known as American Benefits, as a sole proprietorship in Aurora, Colorado, within this judicial district.

Background

- 5. George Thomas Gaines is an unenrolled tax preparer who operates G&G Tax Service, also known as American Benefits, a tax return preparation business, as a sole proprietorship whose last known business address was 1306 S. Chambers Road, Aurora, Colorado.

6. Prior to starting his business in Colorado, Gaines operated a similar tax preparation business in Mississippi. While Gaines was in Mississippi, the IRS investigated his tax preparation activities and assessed penalties, in May 2008, pursuant to 26 U.S.C. § 6694(b) against Gaines for willful or reckless understatements pertaining to 13 different taxpayers' federal income tax liabilities.
7. While the above described investigation was ongoing, Gaines moved to Colorado and continued to prepare returns in which he willfully understated his customers' tax liability by reporting fabricated and/or inflated expenses.

Overview of Scheme Resulting in Millions of Dollars in Tax Losses

8. Since at least 2005, Gaines has continuously, repeatedly, and knowingly prepared for his customers federal income tax returns which included inflated or false deductions in order to fraudulently reduce the customers' federal income tax liabilities. Gaines concocted these improper deductions in a willful attempt to understate his customers' tax liabilities. Gaines also knew, or should have known, that the improper deductions, which led to an understatement of his customers' federal income tax liabilities, were due to unreasonable positions.
9. Gaines did not limit the type of fraudulent deductions he asserted in customers' returns, but most commonly, Gaines prepared his customers' federal income tax returns with two types of inflated or false deductions:
 - (a) Inflated or false itemized deductions listed on Schedule A of Form 1040, including but not limited to: charitable contributions, medical and dental

expenses, home mortgage interest payments, real estate taxes, and personal property taxes; and

- (b) Inflated or false business expenses listed on Schedule C of Form 1040, including but not limited to: advertising expenses, car and truck expenses, legal and professional services expenses, office expenses, and contract labor expenses. In many instances Gaines completely fabricated the business itself.

- 10. Due to Gaines' reporting of bogus Schedule C deductions and the resulting decrease to his customers' earned income, Gaines also fraudulently claimed the earned income tax credit on behalf of many of his customers.

Understatements of Liability Reported in Tax Returns Prepared by Gaines

- 11. Gaines routinely inflated or fabricated the itemized deductions reported on a customer's Schedule A of Form 1040 in order to reduce that customer's tax liability. Several specific examples are listed below:

- (a) Gaines prepared the 2006 and 2007 federal income tax returns for Juan E. Carbajal, which included itemized deductions listed on Schedule A. Gaines fabricated personal property taxes for 2006 in the amount of \$2,930, reported an inflated amount of medical and dental expenses in 2007 in the amount of \$9,675, and inflated and fabricated charitable contributions in 2006 and 2007, in the amount of \$3,157 and \$3,198 respectively;

- (b) Gaines prepared and electronically filed the 2006 and 2007 federal income tax returns for Benito and Maria Meza. Gaines reported charitable contributions in the amount of \$2,965 in 2006 and \$4,686 in 2007. The Mezas did not make any charitable contributions in 2006 or 2007, let alone tell Gaines that they had made them. Gaines also reported personal property taxes in the amount of \$1,200 in 2006 which were not incurred or paid by the Mezas; and
- (c) Gaines prepared the 2006 and 2007 federal income tax returns for Hollie Cooper-Lovett. On the 2006 Schedule A, Gaines falsely reported \$1,365 in personal property taxes, reported an inflated amount of medical and dental expenses of \$9,576, and fabricated \$4,764 in charitable contributions.

12. Gaines routinely reported non-existent businesses on his customers' Schedules C and included false expenses which generated a business loss resulting in decreased tax liability. Several specific examples are listed below:

- (a) Gaines prepared and electronically filed the 2006 and 2007 federal income tax return for Juan E. Carbajal including a Schedule C for a purported business named JC Auto. Gaines reported bogus losses of \$10,304 in 2006 and \$16,015 in 2007 for JC Auto. In both years, Mr. Carbajal did not own his own business, let alone one named JC Auto. His only

occupation was as an employee for Schryver Medical Sales Marketing and that job was his only source of income;

- (b) Gaines prepared and electronically filed the 2006 and 2007 federal income tax returns for the Mezas. In response to Gaines' question regarding sources of income, the couple, using their limited English, informed Gaines that their only sources of income were their wages from their respective jobs (supported by their Forms W-2). Despite that, Gaines prepared a Schedule C for this couple on which he fabricated a business named MB Garder. Gaines then falsely reported that MB Garder had no gross receipts and losses of \$14,643 and \$10,821 in 2006 and 2007, respectively. After reducing the Meza's earned income by these contrived losses, Gaines then fraudulently claimed the earned income tax credit for the Mezas;
- (c) Gaines prepared and electronically filed the 2006 and 2007 federal income tax returns for Ms. Cooper-Lovett, which included a Schedule C reporting a non-existent business, Cooper Manufacturing, with fabricated losses of \$9,625 in 2006 and \$15,716 in 2007. Ms. Cooper Lovett never owned a business called Cooper Manufacturing. Ms. Cooper-Lovett did own a business called Creatively Designed Gift Baskets, however, even this genuine business did not generate losses in the amounts reported by Gaines on the Schedule C for Cooper Manufacturing. Furthermore, Ms.

Cooper-Lovett did not provide Mr. Gaines with any financial documents for Creatively Designed Gift Baskets which would have been necessary to substantiate any Schedule C expenses;

- (d) Gaines prepared and filed the 2006 federal income tax return for Jesus and Lilia Calzada which included a Schedule C. The Schedule C did not list the name of the purported business nor did it even list the type of business purportedly conducted by Mr. Calzada. Rather, the only information included by Gaines on this Schedule C were fabricated business losses of \$10,364. The Calzadas have never owned their own business and certainly did not tell Gaines to report a business on their 2006 Schedule C; and
- (e) Gaines also prepared and electronically filed the 2007 federal income tax return for Nicole Lewis including a Schedule C reporting a fabricated business loss of \$16,098. Ms. Lewis did earn \$1,600 in income by doing laundry for others; however Gaines did not report this income on the Schedule C. Rather, Gaines reported that Ms. Lewis owned a dry-cleaning business with no gross receipts and \$16,098 in expenses on the Schedule C. Ms. Lewis did not own a dry-cleaning business and did not incur over \$16,000 in business expenses.

13. Due to the fabricated Schedule C business losses and improperly claimed itemized deductions reported by Gaines, many of his customers' earned income was sufficiently

manipulated to fraudulently qualify them for or overstate the properly claimed amount of the earned income tax credit.

14. The earned income tax credit ("EITC") is a refundable tax credit available to certain low-income individuals. Claiming this credit can reduce a taxpayer's federal tax liability below zero, entitling the taxpayer to a refund from the United States Treasury. The requirements for claiming the EITC are located in I.R.C. § 32.
15. The amount of the credit depends on the taxpayer's earned income, filing status, and number of dependents for which the taxpayer is responsible. Because of these variables, there is a certain combination of earned income, filing status, and number of dependents that corresponds to the maximum amount of credit allowed.
16. Because of the potential for abuse in claiming the EITC, Congress has authorized the Secretary of the Treasury to impose "due diligence" requirements on federal income tax return preparers claiming this credit for their clients. These "due diligence" requirements which are set forth in 26 C.F.R. 1.6695-2 obligate the return preparer to obtain specific information from the client, and to question the client to ensure that he/she is entitled to the EITC. Federal regulations require return preparers to document their compliance with these requirements, and retain that documentation for three years.
17. Rather than obtain facts from his customers to ensure their eligibility for the EITC, Gaines reported the incorrect filing status of his customers and fabricated deductions and business losses which manipulated his customers' earned income such that his customers

were either improperly qualified for the credit or the amount to which they were entitled was overstated. Several specific examples are listed below:

- (a) Due to the fabricated and inflated deductions reported by Gaines, Mr. Carbajal's earned income appeared to be in an amount that allowed for a larger earned income credit than that to which he was properly entitled. However, Gaines used the manipulated earned income figure and wrongfully claimed \$3,511 as the earned income credit for Mr. Carbajal in 2006 rather than \$1,342 which is what Mr. Carbajal was actually entitled to claim;
- (b) Gaines also wrongfully claimed an earned income credit in the amount of \$2,374 in 2006 and \$1,876 in 2007 on behalf of the Mezas. After the IRS disallowed the fraudulent Schedule A deductions and fabricated Schedule C expenses, this couple's earned income was more than the maximum income allowed for the EITC. Therefore, they were not eligible to claim the credit and were certainly not entitled to the credits Gaines claimed on their behalf; and
- (c) Gaines wrongfully claimed the earned income credit for Ms. Cooper-Lovett in 2007 by improperly listing her filing status as single. Ms. Cooper-Lovett's filing status in 2007 was married filing separately, making her ineligible for the earned income credit.

Tax Loss Caused by Gaines

14. Gaines' continuous, willful, and/or reckless understatement of his customers' federal income tax liabilities has caused substantial revenue losses to the United States. The extent of this loss can be estimated from returns prepared by Gaines which have been audited by the IRS.
15. Gaines prepared 460 federal income tax returns for his clients for tax years 2004 through 2006. Gaines prepared 213 returns for tax year 2007 and he prepared 87 returns for tax year 2008.
16. The IRS has spent considerable time and resources (more than 1,500 hours) auditing returns prepared by Gaines and collecting the taxes owed.
17. The IRS audited 218 returns prepared by Gaines: 2 returns from tax year 2004, 10 from tax year 2005, 93 from tax year 2006 and 113 from tax year 2007. Of those audited returns, 210, or 96%, contained understatements of tax. The total amount of taxes found owing and assessed after these audits exceeded \$940,000.
18. Based on the tax deficiencies actually assessed through audit, the average tax deficiency for each return prepared by Gaines is \$4,331. Therefore, the IRS estimates that the United States' total revenue loss from the 460 federal income tax returns prepared by Gaines for tax years 2004 through 2006 could be as much as \$1,992,260.
19. Gaines continued to prepare federal income tax returns for tax years 2007, 2008 and 2009. Assuming Gaines continued to prepare an average of 153 tax returns each year with the same average tax deficiencies as described above, the IRS estimates that the

United States' revenue loss for tax years 2007, 2008 and 2009 could be as much as \$1,987,929.

20. Therefore, the total revenue loss to the United States due to tax returns prepared by Gaines for tax years 2004 through 2009 is estimated to be as much as \$3,980,189.
21. In an effort to constrict Gaines' ability to continue this scheme, the IRS has revoked Gaines' electronic filing identification number to prevent him from filing federal income tax returns electronically. However, Gaines continues to file federal income tax returns using paper filing.

Count I:

Injunction Under §§ 7407 and 7408

22. The United States incorporates by reference the allegations in paragraphs 1 through 21.
23. Section 7407, I.R.C., authorizes the United States to seek an injunction against any tax return preparer who has engaged in any "fraudulent or deceptive conduct which substantially interferes with the proper administration of the Internal Revenue laws," or who has "engaged in any conduct subject to penalty under section 6694 or 6695."
24. Section 6694, I.R.C., provides that a tax return preparer is subject to penalty if he or she prepares a return or claim for refund understating the taxpayer's liability due to an unreasonable position (one for which there is no substantial authority), and the preparer knew or should have known of the position. A return preparer is subject to a larger penalty if the understatement of liability is due to the preparer's willful attempt to understate the liability or the reckless or intentional disregard of rules or regulations.

25. Section 6695(g), I.R.C., penalizes any tax return preparer who fails to comply with due diligence requirements with respect to determining a taxpayer's eligibility for, or the amount of, the earned income credit.
26. Additionally, I.R.C. § 7407 authorizes the Court to enjoin a person from further acting as a return preparer if the preparer has continually or repeatedly engaged in such conduct and an injunction prohibiting only the unlawful conduct would not be sufficient to prevent the preparer from further interfering with the proper administration of the internal revenue laws.
27. Section 7408, I.R.C., authorizes a district court to enjoin any person from further engaging in conduct subject to penalty under I.R.C. § 6700 or § 6701, if the injunctive relief is appropriate to prevent recurrence of that conduct.
28. Section 6701, I.R.C., penalizes any person who prepares, or assists in the preparation of, any federal tax return, refund claim, or other document, knowing or having a reason to believe that it will be used in connection with any material matter arising under the internal revenue laws, and knowing that if so used it would result in an understatement of another person's tax liability.
29. Gaines has continually and repeatedly prepared and submitted federal tax returns that unlawfully claim itemized deductions, falsely state losses or profits from businesses, and contain unrealistic, unreasonable, and frivolous positions with no basis in fact. Gaines has willfully understated customers' correct tax liabilities and/or falsely claimed the

earned income credit on their behalf and has thus engaged in conduct subject to penalty under I.R.C. §§ 6694, 6695(g), and 6701.

30. Gaines has continually and repeatedly prepared tax returns that understate the tax liabilities of his customers and/or fraudulently claim the earned income credit or larger refunds than that which his customers are entitled, as a result of fabricated, inflated, and/or improper deductions.
31. Injunctive relief is appropriate to prevent this misconduct because, absent an injunction, Gaines is likely to continue to prepare false federal income tax returns and engage in other misconduct of the type described in this complaint. Gaines continued to engage in conduct subject to penalty under I.R.C. § 6694 and continued to disregard internal revenue rules and regulations even after he was assessed penalties for understating his customers' federal income tax liability on returns he prepared for tax year 2004.
32. Gaines failed to exercise due diligence when he prepared returns by failing to confirm that his customers were eligible for the itemized deductions claimed or the losses claimed on the Schedules C and Gaines failed to confirm that his customers were eligible for the earned income credit.
33. Gaines should be permanently enjoined under I.R.C. § 7407 from acting as a tax return preparer because a more limited injunction would be insufficient to stop his interference with the proper administration of the tax laws. He should also be enjoined under I.R.C. § 7408 from further engaging in conduct subject to penalty under I.R.C. § 6701.

Count II:

**Injunction under I.R.C. § 7402 for Unlawful Interference
with the Enforcement of the Internal Revenue Laws**

34. The United States incorporates by reference paragraphs 1 through 33.
35. Section 7402(a), I.R.C., authorizes the court to issue an injunction “as may be necessary or appropriate for the enforcement of the internal revenue laws.” The remedies available to the United States under this statute “are in addition to and not exclusive of any and all other remedies.” I.R.C. § 7402(a).
36. Through the actions described above, Gaines has engaged in conduct that substantially interferes with the administration and enforcement of the internal revenue laws, and he is likely to continue to engage in such conduct unless enjoined.
37. Gaines’s conduct causes irreparable injury to the United States and an injunction under I.R.C. § 7402(a) is necessary and appropriate.
38. Unless Gaines is enjoined, the IRS will have to devote substantial time and resources to examining his customers’ tax returns and liabilities.
39. Unless Gaines is enjoined, the customers relying on Gaines’ federal tax return preparation services may be subject to additional tax liabilities along with interest and penalties as a result of Gaines’s fraudulent tax return preparation.

WHEREFORE, Plaintiff, the United States of America, prays for the following relief:

- A. That the Court find that Gaines has repeatedly and continually engaged in conduct subject to penalty under I.R.C. §§ 6694, 6695(g), and 6701 and that injunctive

relief is appropriate under I.R.C. §§ 7407 and 7408 to bar Gaines from acting as a tax return preparer and from engaging in conduct subject to penalty under I.R.C. § 6701;

- B. That the Court find that Gaines has engaged in conduct that interferes with the enforcement of the internal revenue laws and substantially interferes with the proper administration of the internal revenue laws, and that injunctive relief against him is appropriate to prevent the recurrence of that conduct pursuant to I.R.C. §§ 7407 and 7402(a);
- C. That the Court, under I.R.C. §§ 7402 and 7407, enter a permanent injunction prohibiting Gaines and his representatives, agents, servants, employees, attorneys, independent contractors, and anyone in active concert or participation with him, from directly or indirectly;
 - (1) acting as a tax return preparer or otherwise directly or indirectly preparing or filing, or assisting in the preparation or filing of any federal tax return(s) or other related documents and forms for any other person or entity;
 - (2) engaging in any conduct subject to penalty under I.R.C. § 6694, 6695, or 6701, including preparing any part of a return or claim for refund that includes an understatement due to an unreasonable position or a willful understatement of tax;

- (3) engaging in any other activity subject to penalty under the Internal Revenue Code; and
 - (4) engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws
- D. That the Court, under I.R.C. § 7402, enter an injunction requiring Gaines to contact by mail (and also by e-mail, if an address is known) all persons and entities for whom he prepared any federal tax return or other tax-related document after January 1, 2005 and inform those persons of the entry of the Court's findings concerning the falsity of representations Gaines made on his customers' tax returns, and that a permanent injunction has been entered against him. Gaines must mail the copies within 30 days of the date of this order and must file with the Court a sworn certificate stating that he has complied with this requirement. The mailings shall include a cover letter in a form either agreed to by counsel for the United States or approved by the Court, and shall not include any other documents or enclosures;
- E. That the Court, under I.R.C. § 7402, enter an injunction requiring Gaines to turn over to counsel for the United States a list of the names, addresses, e-mail addresses, phone numbers, and Social Security numbers of all individuals or entities for whom he prepared or helped to prepare any tax-related documents, including claims for refund or tax returns since January 1, 2007. Gaines must

provide this list within 30 days of the date of the injunction and must file with the Court a sworn certificate stating that he has complied with this requirement;

- F. That the Court order that the United States is permitted to engage in post-judgment discovery to ensure compliance with the permanent injunction; and
- G. That this Court grant the United States such other relief, including costs, as is just and equitable.

Dated: November 24, 2010

Respectfully submitted,

JOHN A. DICICCO
Acting Assistant Attorney General

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